

Before the
FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
The Development of Operational, Technical, and)
Spectrum Requirements for Meeting Federal, State) WT Docket No. 96-86
and Local Public Safety Agency Communications)
Requirements Through the Year 2010)

To: The Commission

**COMMENTS OF NLC, City of New York, City of Los Angeles,
City of Chicago, League of California Cities,
National Coordinating Council on Emergency Management
IN RESPONSE TO
SECOND NOTICE OF PROPOSED RULEMAKING**

The National League of Cities ("NLC") hereby submits the following comments on behalf of itself, City of New York, League of California Cities, City of Los Angeles, City of Chicago, and the National Coordinating Council on Emergency Management in response to the Commission's Second Notice of Proposed Rulemaking in the above-captioned proceeding, FCC 97-373, released October 24, 1997.

NLC is the nation's oldest and largest organization representing the nation's cities and towns and their respective elected leaders. Most of its 130,000 individual members are state or local government mayors and council members involved in the development of policy, management, design, and operation of police, fire, emergency medical, local government, highway maintenance, forestry conservation, disaster relief, and other public safety communications systems.

The Commission's Second Notice covers a wide range of issues related to the allocation of 24 MHz for public safety services in the 746-806 MHz band.

NLC urges the Commission to move swiftly, but carefully, to establish rules for the assignment and use of the newly allocated spectrum. NLC, through its state municipal leagues and direct member cities, represents nearly every municipality in the country. One of the organization's highest priorities is to ensure adequate and effective emergency public safety communications capacity and efficiency.

NLC continues to urge maximum efforts by the Commission, in this area of technical complexity, to provide for maximum outreach to federal, state, and local elected leaders to ensure a full opportunity for their appreciation of the steps required to bring emergency wireless communications systems to the levels necessary for maximum effectiveness and performance. NLC is aware of others interested in taking advantage of this spectrum, the resources - financial, legal, and technical - available to those interests. NLC believes the Commission is critical to protecting the broader public interest and safety.

I. REGIONAL PLANNING AND FREQUENCY COORDINATION

A. The Commission should provide incentives for Regional and National Planning

NLC considers communications systems the major vehicle for rapid dissemination of information. They can serve to achieve important *public safety*. Communications systems are perhaps the most vital part of the local infrastructure for anticipating and responding to any man-made or natural disaster.

NLC believes there is an interlocking relationship among inner cities, suburbs, edge cities, and contiguous rural areas which combine into regions. Therefore, NLC believes

strategic planning by stakeholders in a region is crucial to achieve the goals of capacity-building, partnerships, innovation and investment. The Commission should permit local officials to take the lead to develop a precise understanding of their region's needs and to develop processes for subsequent policy development, planning and decision-making that balance both the common good and the legitimate interests of individual segments of the community.

Regional cooperation among and between all levels of government must be encouraged. Partnerships between citizens, the private sector, government, and all key stakeholders must be established. NLC believes, as part of its technical assistance efforts, the Commission should encourage regions to share resources and equipment needed for preparedness and response. Management agencies should be designated in response to the desires of local elected officials. Preference should be given to existing planning and management agencies where they have demonstrated expertise and capability.

Consequently, NLC supports the use of a modified regional planning approach for the management of all 746-806 public safety spectrum and generally agrees with the Commission's proposals regarding regional planning as set forth in paragraphs 109-119 of the Second Notice. No reasonable alternative to regional planning exists in order for the Commission to ensure that spectrum is assigned efficiently and to the highest and best use.

The regional planning, with sufficient time and resources, is critical to ensure maximum public safety, efficiency, and benefit. Otherwise, frequencies would be assigned on a first come-first served basis - perhaps not even to the public safety sector, which might reward agencies that are quick to file applications or have the greatest resources, but who may not necessarily be the users with the most substantial needs. NLC believes that regional plans should be supported by strong, but flexible national guidelines. This would enable adaptation to different specific spectrum requirements and unique geographic considerations across the nation.

Flexible national guidelines would provide models for regional committees to follow where appropriate. Specifically, a national planning committee should establish guidelines for regional committee operation, adopt generic channel plans, develop and refine interoperability and mutual aid channel designations, adopt criteria and guidelines for use of “give-back” channels, and provide a vehicle for coordination of inter-region planning. The national committee (or a comparable body) should also serve as an “appeals board” for regional committee decisions. Although NLC believes any scope of appeal should be limited, such a review would assist in ensuring compatibility between neighboring regions, as well as efficiency in the distribution of spectrum.

Nevertheless, the core of the planning process must be at a regional level. It is there that public leaders and public safety personnel will be able to develop and coordinate localized plans that address their specific spectrum requirements. Otherwise, each part of the country will be subject to arbitrary, rigid, one-size-fits-all plans developed at the national level. Such an approach would ignore differences in current spectrum utilization, propagation, and congestion, as well as variations in the delivery of public safety services. Indeed, even within regions (most of which currently follow state borders) there are likely to be substantial variations (e.g., urban and rural areas).

Regional committees are far more likely than a national committee to understand and be able to address such differences. In addition, most interoperability issues are between and among agencies within the same region (e.g., state, county, and local agencies), and decisions regarding the assignment and use of spectrum for interoperability purposes would best be determined on a regional level.

NLC believes the regional process must include elected officials as well as all public safety agencies. It is critical to involve leaders in order to ensure better public understanding and better understanding of the resources necessary to implement such regional plans. NLC encourages efforts to ensure balance so that no one element (i.e., police, fire, EMS, state government) dominates the process to the exclusion of others.

The planning process should begin with the existing 55 regional committees used for the 821 MHz band, which already exist and have developed years of experience and expertise that will be invaluable in planning the 746-806 MHz band. NLC recommends modifications as stated above and consideration of changes, as appropriate (e.g., to combine some regions and/or alter regional boundaries).

The regional committees, in conjunction with any national committee, should be involved in the planning and assignment of both interoperability channels and “general use” public safety channels. Each region should have a number of mutual aid channels dedicated to each individual service and utilized in a manner similar to that used in many of the current plans for the 821 MHz band, where channels are often assigned for day-to-day use with an ascending order of priority.

B. Successful Regional Planning

Successful regional planning requires extensive participation by elected leaders because of the involvement of agencies, legal liability issues, and equipment and infrastructure costs. Such participation can increase awareness of revenue implications, as well as fuller

appreciation of the resources required to achieve an efficient and effective public safety wireless emergency communications capacity.

A critical element of the regional planning process must also include ongoing participation by the frequency coordinator and its local frequency advisors. In the 821 MHz band, local frequency advisors facilitated the initial formation of the regional committees. The local advisors continue to be key players in the committees, providing invaluable technical support and knowledge of local frequency use. Most importantly, these local advisors provide access to a national database and to additional technical expertise. Assistance from local advisors will be even more critical in the 746-806 MHz band, where 24 MHz will be assigned, 4 times the amount of spectrum currently subject to regional planning.

Each region should have access to plans and data from neighboring regions. This will be particularly important in the 746-806 MHz band where there are likely to be large, consolidated systems that may cover an entire region (or regions). For example, since most of the current regions consist of one state, a state-wide radio systems is likely to impact spectrum utilization in several adjoining regions.

Maintaining a separate and unique regional planning database will be costly and time consuming. NLC believes the Commission must develop a contingency plan to assume responsibility for the database in order to ensure it is available.

Funding is especially important for the regional planning committees for basic operating expenses and activities. Committees have not had any financial resources of their own in the past and were forced to depend upon the willingness of individual public safety

agencies to provide for essential resources, including travel, stationary, computers, telephone charges, photocopies, etc. Without some basic financial support, it will be extremely difficult for regional committee to operate quickly and efficiently, if at all, considering the enormous task of planning the use of 24 MHz of spectrum.

II. INTEROPERABILITY

Interoperability Spectrum Requirements.

Allocating a “significant amount” of the 24 MHz is too much. It would undercut the amount of spectrum needed for day-to-day operations necessary to protect the safety of life and property. NLC supports the original PSWAC plan calling for approximately 10 percent of the 24 MHz to be dedicated to interoperability.

The Commission’s Second Notice places significant weight on the importance of interoperability. The notice recommends that a “significant amount” of the 24 MHz be assigned for “solely for interoperability communications.” Second Notice at ¶44. It is not clear what the Commission means by “a significant amount” or how it is defining “interoperability” in this context. If the Commission means that much of the spectrum in the 746-806 MHz band should be assigned in a manner that promotes interoperability (e.g., encouraging multi-agency systems, interoperable technical rules, and flexible assignments), then NLC concurs.

If (as it appears) the Commission is recommending that a large percentage of this band should be available only for “interoperable communications,” and not for communications among personnel within the same public safety agency, then NLC strongly disagrees. NLC supports a channel plan consistent with the PSWAC recommendations to allot approximately ten percent of the 24 MHz for dedicated interoperability use. To be effective, NLC believes the Commission and the relevant planning committees should establish rules and procedures to encourage interoperability wherever appropriate. However, dedicating huge amounts of spectrum for interoperability (i.e., inter-agency) communications alone would deprive public safety agencies of public safety spectrum for which NLC and public safety agencies fought so hard to obtain to meet current needs. NLC believes the bulk of the 24 MHz must be available for intra-agency communication, which constitutes the bulk of public safety communications and emergency response activity.

The PSWAC recommendation was for 25 MHz to be allocated in the 746-806 MHz band to address immediate spectrum requirements, especially spectrum congestion and the need to implement new public safety communication technologies. The studies that led to the PSWAC spectrum allocation recommendations examined sheer volume and content (i.e., voice, data, images) of current and future public safety radio communications. There was never a finding that anything close to 25 MHz is necessary for interoperability alone. To the contrary, PSWAC recommended an allocation of 2.5 MHz for interoperability below 512 MHz.

The 746-806 MHz band has a critical potential to improve interoperability, in part by making spectrum available to develop wide area, multi-agency systems. New 746-806 MHz equipment should also be interoperable with current 800 MHz public safety systems. In addition, as recommended by NPSTC, some spectrum in the band (approximately 2 MHz) should be set aside in this band for interoperability purposes only. Allocating a “significant amount” of the 24 MHz, however, is too much. It would reduce the quantity of spectrum needed for day-to-day operations that protect the safety of life and property. In addition, no amount of interoperability spectrum in the 746-806 MHz band will provide interoperability with public safety systems operating at 150-170 MHz and 450-512 MHz.

III. DEFINITION OF PUBLIC SAFETY

NLC supports the definitions of public safety, public safety services, public safety services provider, and public safety support provider developed by The Public Safety Wireless Advisory Committee. NLC continues to support those definitions, and urges that the Commission use those definitions to the extent possible and consistent with relevant statutory provisions.

This definition is a critical issue, as the amount of spectrum to be allocated, while substantial, is still far short of what is necessary - especially in the time frame provided for in the new Balanced Budget Act (BBA). Spectrum is such a scarce commodity that it

must be assigned carefully to ensure that those with the greatest needs are the first to obtain use of the spectrum. The PSWAC spent considerable time debating and developing definitions of public safety, public safety services, public safety services provider, and public safety support provider. PSWAC Final Report, at 45. NLC continues to support those definitions, and urges that the Commission use those definitions to the extent possible and consistent with relevant statutory provisions.

As the Commission notes in the Second Notice, Congress included a definition of “public safety services” in the BBA which is similar, but not identical to the PSWAC definitions. In the PSWAC report, “Public Safety Services” are “Those services rendered by or through Federal, State, or Local government entities in support of Public Safety duties” and “Public Safety” is defined as “the public’s right, exercised through Federal, State or Local government as prescribed by law, to protect and preserve life, property, and natural resources and to serve the public welfare.” Thus, under the PSWAC definition, most governmental activities would be defined as public safety services.

The Balanced Budget Act defines “public safety services” to mean services:

- (A) the sole or principal purpose of which is to protect the safety of life, health, or property;
- (B) that are provided—
 - (i) by State or local government entities; or
 - (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

To implement this provision, the Commission proposes to define “Public Safety Service Provider”:

(1) a State or local government entity that provides public safety services; or (b) a non-governmental organization that is authorized to provide public safety services by a government entity pursuant to Section 337(f)(1)(B)(ii) of the Communications Act.

NLC agrees that this proposed definition reflects the relevant statutory provisions.

Specifically, non-governmental organizations are considered public safety service providers only where they are providing “public safety services,” i.e., their “sole or principal purpose” is to “protect the safety of life, health or property.” That properly excludes commercial entities that simply provide communications (or other) ancillary services to public safety agencies. Potentially included in the definition would be volunteer fire departments, disaster relief organizations, and others that have express government authorization to provide public safety services directly to the public. In most instances, public safety service providers would not include for-profit enterprises, which obviously have profit, not the protection of the safety of life, health or property, as their sole or principal purpose.

NLC agrees with the Commission’s suggestion that regional planning committees should have the first responsibility to determine whether an entity qualifies as a public safety service provider and, more importantly, how spectrum should be allotted among such

entities. Otherwise, the Commission itself would be drawn into endless disputes regarding the degree to which a particular entity protects public safety. While that will not be an easy determination for regional committees, they are in a far better position to judge the role various entities play and their relative spectrum requirements.

CONCLUSION

NLC urges the Commission to proceed quickly, but carefully, to adopt rules for the assignment and use of 24 MHz in the 746-806 MHz band consistent with the recommendations set forth above.

Respectfully submitted,

Frank H. Shafroth
Director of Policy and Federal Relations
National League of Cities

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